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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ZOHREH BAHMANI et al., Plaintiffs and Appellants, v. CITY OF LOS ANGELES et al., Defendants and Respondents;	B280029 (Los Angeles County Super. Ct. No. BS148503)

APPEAL from a judgment of the Los Angeles Superior Court, Mary H. Strobel, Judge. Affirmed.

Manatt, Phelps & Phillips, Victor De La Cruz, Benjamin G. Shatz, and Jordan Ferguson for Plaintiffs and Appellants.

Michael N. Feuer, City Attorney, Terry P. Kaufmann Macias, Senior Assistant City Attorney, and Amy Brothers, Deputy City Attorney, for Defendants and Respondents.

Alston & Bird, Paul J. Beard II for Real Party in Interest and Respondent.

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This is the third appeal between two neighbors whose homes overlook the Pacific Ocean. In the second appeal, we affirmed an administrative finding that the original building permit issued to the downslope neighbor miscalculated the required setback for that neighbor's front yard. That neighbor obtained a supplemental building permit. In this third appeal, the upslope neighbor now claims that the supplemental building permit is invalid because (1) the supplemental permit did not comply with the terms of the administrative order invalidating the original permit, and (2) the issuance of the supplemental permit requires the downslope neighbor to "return[] to square one" and to obtain all new approvals and permits as if the original permit had never issued. We reject both claims, and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

A. *Location of property*

Real party in interest Ivan Svitek, as the trustee of the Ivan Svitek Living Trust (Svitek), owns an 11,369 square foot lot on a bluff overlooking the Bel-Air Bay Club, the Pacific Coast Highway and the Pacific Ocean. Petitioners Zohreh Bahmani and Farzin Khalkhali (Khalkhali) live in a house on a parcel up the slope from Svitek's, petitioner Nicolas Andrews owns a nearby home, and petitioner Bel-Air Bay Neighborhood Association is an unincorporated organization run by Khalkhali and created to "protect[] [the subject] neighborhood . . . from

incompatible" "development" (collectively, neighbors).[1] The slope is a geologically unstable area, chiefly due to prior landslides in the area.

B. *Svitek's initial approvals*

1. *The approval-in-concept*

In February 2011, Svitek applied to the Department of Planning of Respondent City of Los Angeles (the City) and obtained an approval-in-concept (AIC) to build a 4,989 square foot single-family dwelling, comprised of "two-story [single-family dwelling] with basement" with a height of 37 feet, 11.25 inches. The AIC represented the Planning Department's finding that the "proposed project conform[ed] in concept to the City['s] land use regulations," but acknowledged that it was "not [itself] a permit." The AIC further provided that "[i]f it is found that the . . . plan or statements" submitted by Svitek in applying for the AIC "are not correct or do not conform to applicable City regulations, [the AIC] shall become null and void." The AIC also set forth the City's general rule that AICs may be issued for "[s]ingle-family dwellings" "except those in geologically unstable areas."

2. *The de minimis waiver*

In May 2011, Svitek applied to the California Coastal Commission (Coastal Commission) to be excused from the usual requirement that he obtain a Coastal Commission-issued coastal development permit. Based in part on the City's issuance of the AIC, the Coastal Commission issued a letter recommending that

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1 Although Khalkhali and Bahmani litigated this dispute for several years prior to Andrews and Bel-Air Bay Neighborhood Association joining them, for ease of reference we refer to these parties as "neighbors" throughout the opinion.

Svitek be issued a "waive[r]" from "the requirement for a coastal development permit" after finding that Svitek's "proposed project is consistent with the community character, and will have no negative effects on visual resources or coastal access" (the de minimis waiver). The de minimis waiver became effective at the Coastal Commission's public meeting on June 16, 2011, when no commissioner objected.

3. *The original building permit*

In September 2011, the City's Department of Building and Safety issued Svitek a building permit authorizing him to demolish the existing house and to erect a "[n]ew 2 story single family dwelling with basement garage Type V-B, 2 story with basement" (the original building permit). The permit authorized the home to be built to a height of 37.9 feet and included a blueprint showing a front yard setback of 9 feet, 10 inches.

In May 2013, the Department of Building and Safety issued a modification to the original building permit to substitute "2-story single family dwelling with basement garage" to "3 story Single Family Dwelling With Attached Garage."[2]

C. *Construction begins*

Armed with the de minimis waiver and original building permit, Svitek began demolition in November 2011 and construction in May 2012.

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2 The noted modification merely revised the work description contained in the supplemental building permit; it did not constitute any substantive change to the actual design or construction of the project.

D. *Neighbors' initial rounds of challenges*

1. *Challenge to Coastal Commission's issuance of the de minimis waiver*

After noticing the construction on Svitek's lot, neighbors in June 2012 wrote a letter to the Coastal Commission demanding that it revoke the de minimis waiver on the ground that Svitek's waiver application contained inaccurate statements. When the Coastal Commission responded that it had no procedures for revoking de minimis waivers and that a review of Svitek's application did not reveal any inaccuracies, neighbors in October 2012 filed a petition for a writ of mandate against the Coastal Commission challenging its issuance of the de minimis waiver.

After the trial court sustained a demurrer to the initial petition with leave to amend, neighbors filed a first amended petition that added six new claims and, as pertinent here, one new defendant—the City. In the amended petition, neighbors sought (1) declaratory relief that the AIC was "null and void" because, as is relevant here, (a) "[t]he AIC states on its face that it may not be applied to single family dwellings in geologically unstable areas," and (b) the proposed height of the dwelling exceeded the 33 foot height limit set by the City's zoning laws, and (2) a writ of mandate against the City to revoke the original building permit because of the dwelling's excessive height.

The trial court sustained the City's motion to strike and its demurrer to the neighbors' first amended petition without leave to amend. The court struck the writ of mandate claim against the City because neighbors had not obtained the court's permission to add new defendants. The court sustained demurrers (1) to the declaratory relief claim involving the AIC because the AIC was the product of an administrative decision and "'an action for declaratory relief is not appropriate to review

an administrative decision,'" and (2) to the writ of mandate claim against the City because neighbors had not exhausted their administrative remedies by challenging the original building permit administratively.

Neighbors appealed, and we affirmed the dismissal of their lawsuit in its entirety, including the trial court's order striking all claims naming the City as a new defendant (*Khalkhali et al. v. Cal. Coastal. Comm'n.* (Nov. 3, 2014, B249860) [nonpub. opn.] at *8-*9 (*Khalkhali*)) and the trial court's order sustaining the demurrer to the first amended petition without leave to amend (*id.* at *3). As pertinent to this appeal, we concluded that (1) the "City's issuance of the AIC and the Commission's issuance of the de minimis waiver" were "properly subject to administrative mandate," and thus could not be challenged via declaratory relief, and (2) neighbors had abandoned on appeal any challenge to the trial court's conclusion that they had not exhausted their administrative remedies regarding the original building permit.

2. *Challenge to the original building permit*

As their lawsuit against the Coastal Commission progressed, neighbors in February 2013 and July 2013 filed two administrative challenges with the Department of Building and Safety seeking to revoke the original building permit. (*Svitek v. City of Los Angeles* (Dec. 20, 2017, B268745) [nonpub. opn.] at *7) The February 2013 challenge alleged several grounds for revoking the permit, including that (1) the original building permit violated the 33-foot height limit set forth in Los Angeles Municipal Code section 12.21.1, and (2) the AIC violated Zoning Administrator Memorandum No. 85, which prohibits issuance of an AIC for projects located in "geologically unstable" areas. The July 2013 challenge alleged that the permit violated the front

yard setback calculation mandated by Los Angeles Municipal Code section 12-08-C.1.

After the Department of Building and Safety rejected both challenges, neighbors appealed, and the City's Director of Planning denied both appeals. Neighbors again appealed and the West Los Angeles Area Planning Commission (Area Planning Commission) granted both appeals. With regard to the first challenge involving the height of Svitek's dwelling, the Area Planning Commission ruled that the City "err[ed] in issuing" the original building permit that "allow[ed] a 37.9 foot height for the single family dwelling." In making this ruling, the Area Planning Commission noted that the AIC for Svitek's project was "issued in error" because Svitek's property was "not eligible" for an AIC due to its "site being located in a geologically unstable area." However, the Area Planning Commission noted that the AIC's "issuance" had been "litigated"—and "rejected"—in the courts. More to the point, the Area Planning Commission also found that "the issuance of [the AIC] and the De Minimis Waiver [by the Coastal Commission] [was] an integral part in determining the building height of the subject property and cannot be disregarded." Because Svitek obtained an AIC (rather than a coastal development permit) from the City, the Area Planning Commission reasoned, Svitek's parcel was not in the "Coastal Zone" and the applicable height limit was 33 feet and *not* the 45 foot height limit applicable to homes in the "Coastal Zone." With regard to the second challenge involving the setback of Svitek's front yard, the Area Planning Commission ruled that the City's calculation of the minimum setback was incorrect.

Svitek filed a petition for a writ of mandate challenging the Area Planning Commission's rulings. The trial court overturned

the Area Planning Commission's ruling that the original building permit violated the height restriction because, in its view, whether the Svitek's property was subject to the 45 foot height limit to homes in the "Coastal Zone" "hing[ed] on the geographic location of the property," not whether Svitek had obtained a coastal development permit. The trial court affirmed the Area Planning Commission's ruling that the original building permit violated the front yard setback requirement.

Both Svitek and neighbors appealed the trial court's order, but we affirmed the order in its entirety. (*Svitek v. City of Los Angeles*, *supra*, B2658745.)

E. *Issuance of supplemental building permit*

1. *Order to comply*

In March 2014, the City's Inspection Bureau issued Svitek an "Order to Comply" in which he was ordered to "stop all work on the construction" and to "[o]btain all required approvals and permits to comply with the required front yard setback and required building height."

2. *Supplemental building permit*

On April 17, 2014, the City's Department of Building and Safety issued Svitek a supplemental building permit. "[P]er the instructions of the . . . Area Planning Commission," the permit "recalculate[d]" the height and "prevailing setback." After remeasuring the building height "from the lowest point within 5'-0" of the building perimeter" and re-calculating the setback in accordance with the Area Planning Commission's prior ruling this case, the City's Department of Building and Safety concluded that no changes to the previously approved structure were required and, on that basis, issued the supplemental building permit.

3. *Neighbors' administrative challenge to the supplemental building permit*

In May 2014, neighbors filed an administrative challenge to the supplemental building permit with the Department of Building and Safety. In October 2014, the Department rejected the challenge. Neighbors then appealed to the City's Director of Planning.[3]

F. *Construction completed*

Svitek completed construction in July 2014.

II. Procedural Background

A. *Pleadings*

In May 2014, neighbors sued the City and/or Svitek for (1) a writ of mandamus, (2) private nuisance, (3) public nuisance, and (4) declaratory relief. In seeking a writ of mandate, neighbors allege that the City "err[ed]" in issuing a supplemental building permit because, in so doing, the City "fail[ed] to enforce" the Area Planning Commission's "determination . . . that the AIC . . . [was] issued . . . [in] . . . error." In neighbors' view, the Area Planning Commission's order required Svitek to obtain a coastal development permit from the City. Neighbors also sought a declaration that "an AIC cannot be issued in lieu of a City Coastal Development Permit for a property located in a geologically unstable . . . area in the dual jurisdictional area." In June 2014, neighbors filed a first amended petition asserting the same four claims.

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3 The parties have not advised us of the status of this administrative appeal, other than to suggest it is still pending.

B. *Motion for summary judgment and/or adjudication*

The City moved for summary judgment or adjudication of neighbors' claim for a writ of mandamus. At the hearing on the motion, neighbors explained that their mandamus claim was aimed at "invalidat[ing] the AIC," which was "completely different" from their pending administrative challenge to the supplemental building permit involving "height and setback issues."

The court granted summary adjudication "to the extent" neighbors seek relief on the ground that "the [s]upplemental [building] [p]ermit violates the height and front yard setback restriction for the Property" because neighbors "have not exhausted their administrative remedies." However, the court denied summary judgment on the entire writ of mandamus claim because "there is a question of material fact whether or not the [Area Planning Commission's] decision precluded the City from issuing the [s]upplemental [building] [p]ermit based on the [2011] AIC."

C. *Merits*

Neighbors dismissed their declaratory relief claim.

Following full briefing and a hearing, the trial court issued a 26-page ruling denying neighbors' claim for a writ of mandamus.

The court concluded that the City had no "ministerial duty" to require Svitek to obtain a coastal developmental permit on the basis of the Area Planning Commission's order. In so concluding, the court rejected neighbors' argument that the Area Planning Commission's statements about the AIC being issued "in err[or]" required the City to treat the AIC as a nullity when issuing a supplemental building permit (and, thus, to require Svitek to

obtain a City-issued coastal development permit) because (1) the Area Planning Commission's order did not so state, (2) the Area Planning Commission's conclusion that the original building permit violated the height limit "explicitly relie[d] on the [continued] existence of the 2011 AIC," and (3) the Area Planning Commission seemed to believe that "the enforceability of the AIC had already been litigated and could not be further challenged" by neighbors. In light of these considerations, the trial court reasoned, "the most reasonable interpretation" of the Area Planning Commission's order "is that [the Area Planning Commission] found as a historical fact that the AIC was issued in error, but that the [Area Planning Commission] did not invalidate the AIC or require [the] City to issue a [coastal developmental permit] for the Project." To the extent neighbors felt that the Area Planning Commission's order was wrong for not expressly and prospectively invalidating the AIC, the court added, neighbors could have sought clarification from the Area Planning Commission, but did not do so.

The court next concluded that the neighbors' "independent challenge to the . . . AIC" was without merit. The court cited three reasons. First, any challenge to the AIC issued by the City in 2011 was time barred under the 90-day deadline set forth in Civil Procedure Code section 1094.6. Second, neighbors had already challenged the City's issuance of the AIC in their challenge to the Coastal Commission's de minimis waiver; that challenge was rejected by the trial court and Court of Appeal as being procedurally improper; and the prior courts' rejection of this claim "barred" neighbors "from relitigating the same" challenge now. Third, neighbors' challenge to the AIC lacked merit because (1) neighbors forfeited any challenge to the Area

Planning Commission's failure to invalidate the AIC when they did not challenge it within 90 days as required by Civil Procedure Code section 1094.6, and (2) the Coastal Commission's grant of a de minimis waiver dispensed with any need for a *City-issued* coastal development permit.

D. *Post-ruling events*

After neighbors voluntarily dismissed their nuisance claims, the trial court entered judgment and neighbors filed this timely appeal.

DISCUSSION

In this appeal, neighbors argue that they are entitled to a writ of mandamus because the City violated a mandatory (and hence ministerial) duty when it issued Svitek a supplemental building permit in reliance on the previously issued AIC and without first requiring Svitek to obtain a City-issued coastal development permit. Although neighbors' current proclamation that they are "challeng[ing] the validity of the [s]upplemental [b]uilding [p]ermit" rather than "the validity of the AIC" is inconsistent with their earlier proclamation to the trial court at the summary adjudication hearing that they were seeking to "invalidate [the] AIC," the nub of neighbors' chameleon-like argument has largely been the same all along—namely, that the City, when issuing Svitek a supplemental building permit, was not allowed to rely on the AIC that everyone (including the City and Svitek) now agrees was improperly issued because (1) the Area Planning Commission's order invalidated the AIC and thus required Svitek to obtain a City-issued coastal development permit, and (2) the issuance of a supplemental building permit *itself* "return[ed]" Svitek "to square one" regarding all City

approvals and thus required him to obtain a City-issued coastal development permit.

Although there is some room for debate, we conclude that neighbors' claim is best treated as a petition for a traditional writ of mandate pursuant to Code of Civil Procedure section 1085 for two reasons. First, and as a general matter, the issuance of building permits is presumptively ministerial (and hence subject to review under the traditional writ). (*Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1010-1011; *Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286, 302.) Second, neighbors' primary arguments on appeal are premised on the City's failure to follow a mandatory (and hence ministerial) duty not to issue Svitek a supplemental building permit until Svitek first obtained a City-issued coastal development permit. The nature of this challenge sounds in traditional mandamus. (*Beach & Bluff Conservancy v. City of Solana Beach* (2018) 28 Cal.App.5th 244, 259 [traditional mandamus applies to "'compel the performance of a duty which is . . . ministerial in character' [citation]"].)

We independently review a trial court's denial of a traditional writ of mandamus and, in so doing, ask whether the City's issuance of the supplemental building permit in this case was "arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair." (*Khan v. Los Angeles City Employees' Retirement System* (2010) 187 Cal.App.4th 98, 106.) We also independently review any subsidiary questions of law and the application of the law to undisputed facts. (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1032; *City of Los Angeles v. Superior Court* (2015) 234 Cal.App.4th 275, 281-282.)

I. Did The Area Planning Commission Invalidate the AIC and Condition the Issuance of Any Supplemental Building Permit On Svitek First Obtaining A City-Issued Coastal Development Permit?

Neighbors' first argument is that the City had a ministerial and mandatory duty to require Svitek to obtain a City-issued coastal development permit because the Area Planning Commission's order invalidating Svitek's original building permit so dictated.

We reject this argument for two reasons.

First and foremost, the Area Planning Commission's order and attached findings do not require Svitek to get a City-issued coastal development permit. To be sure, the findings recount that the AIC was "issued in error" because the location of Svitek's property in a "geologically unstable area" rendered it "[in]eligible" for an AIC. But the order and findings, on their face, do no more than "[o]verturn[] the decision" of the City Planner when she concluded that "the Department of Building and Safety did not err in issuing [the original building permit] to allow the height of a single-family dwelling under construction." Neither the order nor the accompanying findings say anything about the AIC's prospective validity or the need to obtain a City-issued coastal development permit. We must give effect to the words of the Area Planning Commission's order. (E.g., *Baldwin v. City of Los Angeles* (1999) 70 Cal.App.4th 819, 838 [courts "should first turn to the words of the ordinance to determine the intent of the legislative body"].)

Second and equally importantly, the Area Planning Commission's finding that Svitek's property violated the City's height limits was premised on its finding that Svitek's property was not "located in a Coastal Zone," which was itself premised on

the fact that Svitek had obtained the AIC rather than a City-issued coastal development permit. In other words, the Area Planning Commission's ruling invalidating the height limit of the original building permit was premised on the continued validity of the AIC. Indeed, the Area Planning Commission itself noted that the AIC was "an integral part" of "determining [which] building height" limit applied. We decline to construe the Area Planning Commission's order in a way that conflicts with its own rationale.

Neighbors offer two arguments against this conclusion.

First, neighbors assert that various members of the Area Planning Commission made statements at the public hearing that preceded its order, that these statements indicate an intention to require Svitek to obtain a City-issued coastal development permit, and that the City's staff who drew up the Area Planning Commission's order were either incompetent or subversive in not incorporating the commissioners' oral statements into the order and findings. These assertions lack merit. The three commissioners neighbors cite stated, in one form or another, that "the AIC was granted improperly" and one of them characterized the AIC as "the beginning of the whole house of . . . cards." But the order and findings accurately reflect these comments; importantly, none of these comments says anything about City-issued coastal development permits. Consequently, all of the cases neighbors cite about oral statements trumping written orders—even if we assume they are relevant—are beside the point. For the same reasons, neighbors' suggestion that City staff are part of some conspiratorial plot to undermine the Area Planning Commission is both refuted by the transcript and based on nothing but speculation.

Second, neighbors contend that the City has taken inconsistent positions on the validity of the AIC. This contention is both incorrect and irrelevant. It is incorrect because the City's position, when it was defending the Area Planning Commission's ruling during Svitek's challenge to that ruling, that "the AIC[] should not [have] issued" is entirely consistent with its position in this case because the City continues to concede that the AIC should not have issued in the first place. The issue in this case, however, is what effect this error has on the procedures Svitek must follow *now*. Neighbors' contention is also irrelevant because what matters for purposes of this argument is what the *Area Planning Commission* ruled, not what the City may have said when subsequently defending that ruling.

II. Is Svitek Otherwise Required To Obtain a City-Issued Coastal Development Permit Before Obtaining a Supplemental Building Permit?

Neighbors' second argument is that, independent of what the Area Planning Commission did, the supplemental building permit is an entirely new document that negates all prior approvals pertinent to the original building permit (including the AIC) and thus requires Svitek to obtain a City-issued coastal development permit. To address this argument, we begin with an overview of the pertinent law, set forth our analysis, and address the parties' further arguments.

A. *Pertinent law*

The California Coastal Act (Pub. Resources Code § 30000 et seq.)[4] (the Coastal Act) "govern[s] land use planning for the entire coastal zone of California." (*Pacific Palisades Bowl Mobile*

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4 All further statutory references are to the Public Resources Code unless otherwise indicated.

Estates, LLC v. City of Los Angeles (2012) 55 Cal.4th 783, 793 (*Pacific Palisades*).) The "[c]oastal zone" encompasses the length of California's entire coastline, "extending seaward to the state's outer limit of jurisdiction . . . and extending inland generally 1,000 yards from the mean high tide line of the sea." (§ 30103, subd. (a).) The Coastal Act generally requires "any person . . . wishing to perform or undertake any development in the coastal zone" to "obtain a coastal development permit" from the Coastal Commission or, if the local government with jurisdiction over the pertinent parcel of land so qualifies, from the local government as the Coastal Commission's delegate. (§§ 30600, 30600.5.) The City of Los Angeles so qualifies. (L.A. Mun. Code, § 12.20.2, subd. (A).) For developments within the subset of the "coastal zone" known as the "dual jurisdiction zone" (that is, "within 300 feet of the inland extent of any beach" or of "the mean high tide line" or "within 300 feet of the top of the seaward face of any coastal bluff"), the Coastal Act requires a coastal development permit be obtained *first* from the local government qualifying as the Coastal Commission's delegate *and then* the Coastal Commission. (§ 30601; Cal. Code Regs., tit. 14, § 13301; *Pacific Palisades*, *supra*, 55 Cal.4th at p. 794.)

Although the Coastal Act relies in part on local governments either as delegates or, in a dual jurisdiction zone, as screeners, those local governments are at all times implementing the state-wide policies enshrined in the Coastal Act. (*Pacific Palisades*, *supra*, 55 Cal.4th at p. 794 ["A fundamental purpose of the . . . Act is to ensure that state policies prevail over the concerns of local government"]; *Charles A. Pratt Construction Co., Inc. v. California Coastal Com.* (2008) 162 Cal.App.4th 1068, 1075 [same].) The primacy of the Coastal Commission is built

into the Coastal Act itself: The local government delegate or screener is required to follow the Coastal Commission's "interpretive guidelines" (§§ 30620.5, subd. (a) [so requiring], 30620 [authorizing Coastal Commission to promulgate those guidelines]), and any applicant or "aggrieved person" dissatisfied with the local government's handling of a coastal development permit in a dual jurisdiction zone appeals *to the Coastal Commission* (§§ 30603, subds. (a)(1), (a)(2), 30625; see generally §§ 30621, 30622, 30620, subd. (d); Cal. Code Regs., tit. 14, § 13321).

B. *Analysis*

The question whether Svitek is required to obtain a City-issued coastal development permit does not exist in a vacuum; we must necessarily examine it in the context of this case. And in this case, it is undisputed that Svitek's parcel is in a dual jurisdiction zone, that the Coastal Commission issued Svitek's project a de minimis waiver, and that the validity of that de minimis waiver was thoroughly litigated and, right or wrong, is now established as law of the case (e.g., *Morohoshi v. Pacific Home* (2004) 34 Cal.4th 482, 491). This case therefore presents the question whether the Coastal Commission's issuance of the de minimis waiver excuses Svitek from any duty to obtain a City-issued coastal development permit.

We start with the City's rules regarding when a City-issued coastal development permit is required. Although, as noted above, the Coastal Act generally requires an applicant seeking to build in a dual jurisdiction zone within the City's boundaries to obtain coastal development permits from *both* the City *and* the Coastal Commission (§ 30601), the City does not require an applicant to obtain a City-issued coastal development permit

when the Coastal Commission's Executive Director has excused the applicant from the duty to obtain a coastal development permit from the Coastal Commission under section 30624. (L.A. Mun. Code, § 12.20.2, subd. (C)(1).) Section 30624 empowers the Coastal Commission's Executive Director (or, if applicable, its local government delegate) to issue a coastal development permit under expedited and abbreviated procedures for, among other things, "any" developments regarding a "single-family dwelling." (§ 30624, subd. (a) [in such cases, permit may issue "without compliance with the procedures specified in this chapter"]; Cal. Code Regs., tit. 14, §§ 13150-13152, 13328-13328.9.)

The de minimis waiver in this case was not issued pursuant to section 30624, but rather section 30624.7. Section 30624.7 empowers the Executive Director of the Coastal Commission to "waive[]" the requirement that an applicant obtain a coastal development permit for "any development that is de minimis." (§ 30624.7.) A development is "de minimis" if "it involves no potential for any adverse effect, either individually or cumulatively, on coastal resources and that it will be consistent with the policies of Chapter 3" of the Coastal Act. (*Ibid.*)

The Los Angeles Municipal Code does not expressly excuse an applicant who obtained a de minimis waiver pursuant to section 30624.7 from the requirement of obtaining a City-issued coastal development permit. This presents the question: Is such an exception *implied*? As a matter of statutory construction, courts ""may not imply additional exemptions unless there is a clear legislative intent to the contrary."" (*Simmons v. Ghaderi* (2008) 44 Cal.4th 570, 583, quoting *Rojas v. Superior Court* (2004) 33 Cal.4th 407, 424 [identifying this maxim as "expressio unius est exclusion alterius"].)

We conclude that the City's rule excepting applicants who obtain an expedited coastal developmental permit from the Coastal Commission from the duty to obtain a City-issued coastal development permit for development of a single-family dwelling implies an exception for those applicants who obtain a de minimis waiver from the Coastal Commission for similar developments. This conclusion is dictated by clear legislative intent of the City in excepting expedited coastal development permits and of our Legislature in enacting the Coastal Act itself. We reach this conclusion for two reasons.

First, requiring an applicant to obtain a City-issued coastal development permit after the Coastal Commission has already determined that no such permit is needed due to the project's de minimis impact empowers the local government to ignore the Coastal Commission's determination when it comes to implementing the Coastal Act. This has it backwards. As explained above, it is the local government who serves as the Coastal Commission's delegate and adjunct in "ensur[ing] that state policies prevail over the concerns of local government." (*Pacific Palisades*, *supra*, 55 Cal.4th at p. 794.) Neighbors' view would swap the City and state's respective roles in derogation of this clear legislative intent.

Second, requiring an applicant to obtain a City-issued coastal development permit after the Coastal Commission has issued a de minimis waiver—but not so requiring when the Coastal Commission has issued a coastal development permit using the expedited procedures for "single-family dwellings"—makes no sense. If the City is willing to dispense with further City-based review for projects that are, in the Coastal Commission's view, so minor as to warrant an expedited (and

hence truncated) process to obtain a Coastal Commission-issued coastal development permit, does this same logic not apply with *greater* force to projects that are, in the Coastal Commission's view, so minor as to warrant no Coastal Commission-issued permit *at all*? Requiring a City-issued coastal development permit in one context but not the other is absurd, and thus contrary to clear legislative intent. (*People v. McCullough* (1992) 9 Cal.App.4th 1298, 1300 [courts may imply exceptions to avoid "potentially absurd results"]; *Del Mar v. Caspe* (1990) 222 Cal.App.3d 1316, 1333; see generally *California Building Industry Assn. v. State Water Resources Control Bd.* (2018) 4 Cal.5th 1032, 1041 ["We construe the statute's words . . . to avoid absurd results."].) We noted as much in dicta in the first appeal in this case. (*Khalkhali*, *supra*, B249860 at *10, fn. 3.)

Neighbors offer two reasons why this dichotomy is not absurd. They assert that requiring an applicant to obtain a City-issued coastal development permit when the Coastal Commission has issued a de minimis waiver ensures that there is *some* public hearing before a project satisfies the Coastal Act. This assertion ignores that de minimis waivers take effect only if at least two-thirds of the Coastal Commission members do not object "at [a] regularly scheduled [Coastal Commission] meeting." (§ 30624.7.) In other words, there *is* a public hearing. Although neighbors argue that they did not receive actual notice of the meeting regarding Svitek's de minimis waiver, the validity of that waiver is now law of the case. We reject neighbors' related argument that more process is always better; if that were the intent behind the Coastal Act, sections 30624 and 30624.7 would not exist.

Neighbors next assert that requiring an applicant to obtain a City-issued coastal development permit also allows for the City

to consider and air "issues of local concern" and also requires the City to make findings under the Coastal Act, including findings regarding the Coastal Commission's February 1977 interpretive guidelines (L.A. Mun. Code § 12.20.2, subd. (G)(1)(f)). The desire to have a hearing where "issues of local concern" are aired does not justify requiring an applicant to obtain a City-issued coastal development permit when he obtains a de minimis waiver but not when he obtains an expedited permit, because the expedited permit process before the Coastal Commission also provides no opportunity to air "issues of local concern." Further, the February 1977 interpretive guidelines are promulgated by the Coastal Commission for local governments to follow; they do not give local governments license to second guess the Coastal Commission's de minimis waiver determination. Neighbors' insistence that excepting developments in receipt of a de minimis waiver from further City review "wholly eviscerates" the City's authority to regulate coastal development ignores the central rationale of dual permit jurisdiction under the Coastal Act, which clearly subordinates the City's regulatory authority to that of the Coastal Commission.

For these reasons, we conclude that the clear legislative intent behind the Coastal Act and the City's exemption for applicants who obtained an expedited coastal development permit from the Coastal Commission warrants recognition of an exception for applicants who obtained a de minimis waiver for a single-family dwelling from the Coastal Commission. Because Svitek did so, he is not required to obtain a City-issued permit before the City may issue a supplemental building permit.

C. *Neighbors' arguments*

Neighbors raise what boil down to five arguments to the contrary.

First, neighbors contend that any modification to the original permit requires Svitek to "return[] to square one"--that is, to start all over and obtain all new approvals, including from the City (and, ostensibly, from the Coastal Commission as well). We reject this contention. Tellingly, neighbors cite no authority for this proposition. And there is good reason for this: Development would grind to a halt if every time a developer needed to modify a building permit in any way, he had to start the entire building permit process all over again. As one court aptly noted regarding such a rule in a similar context, "[t]his cycle [of starting over] could potentially repeat itself forever, or at least for an extended period of time" and "would render any proposed" building permits "almost impossible to amend." (*Neumont v. State* (Fla. 2007) 967 So. 2d 822, 829 [regarding procedures for amending zoning ordinances].) "[D]uplicative proceedings," our Supreme Court has noted, "are surely inefficient, awkward and laborious" (*Elkins v. Derby* (1974) 12 Cal.3d 410, 420), and neighbors' proposed rule would make duplication the norm. Indeed, it is undisputed that at least two other neighbors also obtained a de minimis waiver from the Coastal Commission when building their own house; if we adopted their proposed rule, they too would be required to obtain a City-issued coastal development permit should they seek City approval for any modification to that home and, if they did not so qualify, would be potentially required to tear down their own home. Requiring Svitek to start all over is particularly absurd

where, as here, the supplemental building permit did not result in any physical changes to his home.

Second, neighbors argue that several provisions of the Los Angeles Municipal Code invalidate the prior AIC and, by extension, the supplemental building permit. The provisions they cite—Los Angeles Municipal Code sections 12.26, subd. (A)(2), 12.20.2, subd. (J), 91.104.2.5, 98.0601, subd. (a), and 91.8105—invalidate building permits that do not comply with the code (L.A. Mun. Code §§ 12.26, subd.(A)(2), 91.104.2.5, 91.8105), that were granted on the basis of "inaccurate, erroneous or incomplete information" (L.A. Mun. Code § 12.20.2, subd. (J)) or that were granted "in error" when "conditions are such that the action should not have been allowed" (L.A. Mun. Code § 98.0601, subd. (a)(2)). As we explain above, Svitek's supplemental building permit complies with the Los Angeles Municipal Code because the Coastal Commission's issuance of a de minimis waiver excuses him from the obligation to obtain a City-based coastal development permit under the code. Contrary to what neighbors argue, Svitek also did not present inaccurate information when obtaining the AIC; although the AIC form indicates that AICs will not issue in geologically unstable areas, Svitek did not in the AIC application represent that his parcel was *not* in such an area. Further, the Coastal Commission's subsequent issuance (and final litigation) of the de minimis waiver, whether erroneous or not, definitively establishes that Svitek's parcel complies with the Coastal Act and, by extension, the provisions of the municipal code implementing the Coastal Act.

Third, neighbors attack the reasons that the City's staff offered, in this litigation, for not vacating the AIC and not

requiring Svitek to obtain a City-issued coastal development permit before a supplemental building permit would issue. These attacks are irrelevant in light of our conclusion that the Coastal Commission's issuance of a de minimis waiver obviates any need for a City-issued coastal development permit.

Fourth, neighbors invoke the maxim that "[f]or every wrong there is a remedy" (Civ. Code, § 3523) and urge that the City's error in issuing an AIC should not go unaddressed or be "allowed to vest into [Svitek's] valid right to build." For nearly a century, however, our Supreme Court has acknowledged that this maxim "is not to be regarded as affording a second remedy to a party who has lost the remedy provided by law through failing to invoke it in time—even though such failure accrued without fault or negligence on his part." (*People v. Reid* (1924) 195 Cal. 249, 260, overruled on other grounds, *People v. Hutchinson* (1969) 71 Cal.2d 342; *People v. Kim* (2009) 45 Cal.4th 1078, 1099.) Here, neighbors had a remedy before the Coastal Commission to halt the wrongful issuance of the AIC—either by appealing to the Coastal Commission or by attacking the Coastal Commission's subsequent de minimis waiver—but they did not invoke it properly and the Coastal Commission's de minimis waiver is now final.

Finally, neighbors argue that any failure on their part to overturn the AIC does not estop them from doing so now because the City's issuance of the AIC violated the municipal code and because estoppel does not apply to acts in violation of the law (and which accordingly become ultra vires acts). (See *Pettitt v. City of Fresno* (1973) 34 Cal.App.3d 813, 819-820, 823 [estoppel]; *Horsemen's Benevolent & Protective Assn. v. Valley Racing Assn.* (1992) 4 Cal.App.4th 1538 [ultra vires].) Neighbors have waived

these arguments by raising them for the first time in their reply brief. (*People v. Tully* (2012) 54 Cal.4th 952, 1075.) In any event, they lack merit because any error in issuing the AIC has been superseded by the Coastal Commission's issuance of the de minimis waiver and, importantly, the de minimis waiver is both definitively resolved and was made in full compliance with the Coastal Commission's substantive and procedural rules.

In light of our conclusions, we have no occasion to reach the City's and Svitek's alternative arguments that we should affirm the trial court's judgment because (1) neighbors' appeal is moot in light of the Area Planning Commission's 2018 resolution vacating its 2014 order, and (2) neighbors' challenges to the AIC are barred by various statutes of limitations and preclusion doctrines.

DISPOSITION

The judgment is affirmed. The City and Svitek are entitled to their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ